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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **24.04.2023**

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A(MD)No.686 of 2022
and
CROSS OBJECTION(MD)NO.15 of 2023
and
C.M.P(MD)No.5459 of 2023

C.M.A(MD)No.686 of 2022

1.R.Tamil Ilakkiya

2.Minor R.Priyadharshini

2.Minor R.Rithik

Appellants 2 and 3, who are minors are represented by their mother and natural guardian, the first appellant herein R.Tamil Ilakkiya)
:Appellants/Petitioners

.VS.

The Tamil Nadu State Transport Cooperation Limited
Madurai, represented by its Managing Director,
Bye-pass Road,
Madurai – 625 010. :Respondent/Ist Respondent

CROSS OBJECTION(MD)NO.15 of 2023

The Managing Director,
Tamil Nadu State Transport Corporation Limited,
Madurai. :Cross=Objector/Respondent

.VS.

1.Tamil Ilakiya



2.Minor R.Priyadharshini

3.Minor R.Rithika

(minor Respondents 2 and 3 are represented by their mother and tuardian, the first respondent herein Tamil Ilakiya)

:Respondents/Respondents

PRAYER in C.M.A(MD)No.686 of 2023: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the award and decree made in M.C.O.P.No.445 of 2019, dated 12.11.2021, on the file of the Motor Accidents Claims Tribunal/Special District Judge(MACT), Madurai,for enhancement of compensation.

PRAYER in CROSS OBJECTION(MD)NO.15 OF 2023: Cross objection filed under Order 41 Rule 22 of Civil Procedure Code against the order and decree made in M.C.O.P.No.445 of 2019, dated 17.11.2021, on the file of the Motor Accidents Claims Tribunal/Special District Judge(MACT), Madurai,insofar as it is against the cross-objector is concerned.

C.M.A(MD)No.686 of 2023

For Appellant :Mr.V.Sakthivel

For Respondent :Mr.K.A.Thirumalaiappan

CROSS OBJECTION(MD)NO.15 OF 2023:

For Cross-Objector :Mr.K.A.Thirumalaiappan

For Respondent :Mr.V.Sakthivel



COMMON JUDGMENT

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The Civil Miscellaneous Appeal has been filed by the appellants/claimants seeking enhancement of compensation, whereas, the Cross-Objection has been filed by the Transport Corporation challenging the quantum of compensation awarded by the Tribunal.

2.The parties are referred to herein as per their ranking before the Tribunal.

3.The brief facts leading to the filing of the appeal and cross objection are as follows:

The deceased Ranjith, was aged 38 years at the time of accident, working as Barbender in a construction company and on 24.10.2018 at about 9.30 p.m., while he was travelling as a pillion rider in the vehicle of his friend deceased Srinivasan bearing Registration No. TN 59 CB o089, the offending vehicle bearing Registration NO. TN 58 N 2018 bus belonging to the respondent transport Corporation came in a rash and negligent manner and driven by its driver in a high speed and dashed against the two wheeler and the deceased succumbed to injuries and died on the



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spot. A crime has been registered against the driver of the offending vehicle and the deceased was earning a sum of Rs. 24,000/-p.m.The claimants are the wife and two minor children.

4.It is the stand of the respondent/Transport Corporation that the bus was driven by its driver in a cautious manner, whereas, the driver of the two wheeler drove the vehicle in an unabbreviated condition and as result, hit the front side of the bumper.

5.Before the Tribunal, on the side of the Petitioners, P.W.1 and P.W.2 were examined and Ex.P1 to Ex.P17 were marked. On the side of the respondent, R.W.1 and R.W.2 were examined and Ex.R1 marked.

6.The Tribunal, on a perusal of the evidence of P.W.1 and P.W. 2 and considering the other documentary evidence, came to the conclusion that the driver of the offending vehicle was rash and negligent in driving the vehicle and awarded the compensation as follows:

- 1.For loss of income - Rs.16,18,120/-
- 2.Loss of consortium
to the first Petitioner - Rs.40,000/-
- 2.For loss of parental - Rs.80,000/-
to the Petitioners 2 and 3
- 3.For funeral expenses - Rs.15,000/-



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4.For loss of estate -Rs.15,000/-

5.For Transport expenses

-Rs.5000/-

total

-Rs.18,35,120/-

7.The Respondent-Corporation has filed cross-objection challenging the quantum of compensation.

8.As the appellants/claimants have filed appeal seeking enhancement of compensation and the respondent Corporation has filed cross-objection challenging the quantum of compensation, since the liability has not been challenged and only the quantum of compensation was challenged, both the cases are taken up together and disposed of by this common judgment.

9.The learned counsel for the appellants/claimants would submit that the deceased was aged 38 years and he was earning more than Rs.24,000/-p.m and he was working as a Barbender in a construction company and there was always a demand for such work. Hence the notional income fixed by the Tribunal is very low.

10.The learned counsel for the respondent Corporation would submit that the notional income fixed by the Tribunal is



reasonable and does not require any interference by this Court.

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11. In the light of the above submission, the point that arose for consideration in the appeal and cross objection are as follows:

1. Whether the quantum of compensation fixed by the Tribunal is just and reasonable and whether it requires enhancement?

12. It is not disputed that the deceased was aged 38 years at the time of accident. The Tribunal, based on the evidence, fixed the notional income of the deceased at Rs.10,000/-p.m. The evidence adduced on the side of the Petitioners that the deceased was a Barbender in the construction company. Though it is their contention that he was earning a sum of Rs.24,000/-, the Tribunal has fixed the notional income at Rs.10,000/-. It is relevant to note that when persons working in a construction field, they will get reasonable wages. Further, there is a demand for such type of works also in the present days. Even an ordinary Mason engaged in construction work will get Rs.900/- per day. Therefore, this Court is of the view that the notional income fixed by the Tribunal is very low and it is therefore, enhanced to Rs.12,000/-p.m., which will



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fetch a reasonable and just compensation to the wife and two minor children. Accordingly, when 40% of the monthly income is added towards future prospectus, the monthly income comes to Rs. 16,800/- and if one third of the monthly income is deducted towards the personal expenditure of the deceased, the monthly income comes to Rs.11,200/-and when a multiplier of '15' is applied for the age group of the deceased, the loss of income is arrived at Rs. 20,16,000/-(Rs.11,200/- x 12 x 15).The award of the Tribunal under the other notional heads ie., loss of consortium to the first petitioner/wife at Rs.40,000/- and loss of parental consortium to the Petitioners 2 and 3 children at Rs.80,000/-, for funeral expenses at Rs.15,000/-, for loss of estate at Rs.15,000/- and for transport expenses at Rs.5000/- are confirmed. In total, the appellants/claimants are entitled to a compensation of Rs. 21,71,000/- which is tabulated as follows:

S.No	Name of the heads	Awarded by the Tribunal	Awarded by this Court	Remarks
1	For loss of income	Rs. 16,80,120/-	Rs. 20,16,000/-	enhanced
2	For loss of spouse consortium to the first petitioner	Rs.40,000/-	Rs.40,000/-	same



3	For loss of parental consortium to the Petitioners 2 and 2	Rs.80,000/-	Rs.80,000/-	same
4	For funeral expenses	Rs.15,000/-	Rs.15,000/-	Same
5	For loss of estate	Rs.15,000/-	Rs.15,000/-	Same
6.	For transport expenses	Rs.5000/-	Rs.5000/-	Same
7	Total	Rs. 18,35,120/-	Rs. 21,71,000/-	enhanced

with interest at the rate of 7.5%p.a., from the date of claim petition till the date of realisation.

13.In the result, the Cross-Objection filed by the Transport Corporation stands dismissed, whereas, the Civil Miscellaneous Appeal filed by the appellants/claimants stands partly allowed enhancing the compensation from Rs.18,35,120/- to Rs.21,71,000/- with interest at the rate of 7.5% p.a from the date of claim petition till the date of realization. The respondent-Corporation is directed to deposit the enhanced award amount to the credit of claim petition before the Tribunal, together with accrued interest and costs, less the award amount if any already deposited, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made,the first claimant is entitled



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to a sum of Rs.11,71,000/- and the second and third claimants are each entitled to Rs.5 lakhs, with proportionate accrued interest and costs. The first claimant/wife is permitted to withdraw her respective share in the award amount together with proportionate accrued interest and costs, by filing proper application before the Tribunal. Insofar as the shares of the minor claimants 2 and 3 are concerned, the Tribunal is directed to deposit the same in an interest bearing fixed deposit, in any one of the nationalized bank, initially for a period of three years, renewable thereafter, till the minor attains majority. The first claimant, mother and natural guardian of the minor claimants is permitted to withdraw the interest from the fixed deposits made in the name of minor claimants 2 and 3, directly from the bank once in three months and utilize the same for the welfare of the children. The appellants/claimants are directed to pay the excess court fee towards the enhanced award amount before the Registry. Only on such deposit being made, Registry is directed to draft the decrees in the Civil Miscellaneous Appeal as well as in the Cross-Objection. No costs. Consequently, connected Miscellaneous Petition is closed.

24.04.2023



Index:Yes/No
Internet:Yes/No
NCC:Yes/No
vsn

To

- 1.The Motor Accidents Claims Tribunal,
Special District Judge(MACT),
Madurai.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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N.SATHISH KUMAR.,J.

vsn

COMMON JUDGMENT MADE IN
C.M.A(MD)No.686 of 2022
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